IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1272 of 1983

For Approval and Signature:

THE *HON'BLE* MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to civil judge?

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RAHIMMIYA SARFUDDIN SHAIKH & Ors.

vs.

VAGHRI CHHAGAN AJMAL & Ors.

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Appearance :
Mr. AJ MEMON for Petitioners
Respondent No. 1 :: DELETED
MR MEHUL SHARAD SHAH for Respondents

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Coram : Hon'ble Miss Justice R.M Doshit

5th July, 2005.

ORAL ORDER

Feeling aggrieved by the judgment and order dated 14th February, 1983 passed by the learned *Extra* Assistant Judge, Mehsana in Regular Civil Appeal No. 216 of 1980, the appellant-plaintiff in Civil Suit No. 206 of 1977,

have preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 {hereinafter referred to as, "**the Rent Act**"}.

The plaintiff is a Trust running a Madrasa at Patan. The open land belonging to the Trust, adjacent to the Madrasa and a mosque was leased to the defendants for a monthly rent of Rs. 10=50 paise. The plaintiff instituted Civil Suit No. 206 of 1977 in the Court of learned Civil Judge [JD], Patan for recovery of possession of the suit land on the grounds that the defendants had unlawfully sublet part of the suit land and that they had committed breach of conditions of tenancy. The suit was contested by the defendants.

The learned Civil Judge, by judgment and order dated 29th September, 1980, dismissed the suit for recovery of possession and passed decree for recovery of amount of rent due. Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No. 216 of 1980 in the Court of learned District Judge, Mehsana. The said Appeal came to be dismissed by the learned *Extra* Assistant Judge, Mehsana by the *impugned* judgment. Therefore, the present Revision Application.

Pending this Revision Application, the parties to the suit have settled the matter amicably. The consent

terms endorsed by one of the trustees of the Trust, five defendants and both the learned advocates alongwith the sketch of the suit land has been placed on the record of the matter. Under the said settlement, the defendants have agreed to vacate part of the suit land, Khala No.1, marked as “ABCDEFGH-1” in red coloured boundary by removing their huts constructed thereon. It is also agreed that defendants shall shift their houses and households in part of the suit land, Khala No.2, marked as “IJKL” in green coloured boundary; that the temple constructed by the defendants in the land Khala No.1 shall be removed and shifted within the land Khala No.2; each defendant shall execute a rent note in favour of the Trust and shall be liable to pay rent of Rs. 10/= per month. In the event, the defendants fail to carry out the settlement, the Trust shall have liberty to enforce the settlement. Both the learned advocates agree that possession of part of the suit land Khala No.1 has been handed over by the defendants to the Trust.

The aforesaid Settlement with accompanying sketch is ordered to be maintained on the record of the matter. In view of the above settlement, the Revision Application is partly allowed. The respondents-defendants are directed to remove the super-structures, including the temple constructed on the aforesaid land Khala No.1 marked as “ABCDEFGH-1” in red coloured boundary as early as possible but not later than 30th September, 2005. The

defendants shall be at liberty to construct not more than five huts for their residence on the land Khala No.2 marked as “IJKL” in green coloured boundary in the accompanying sketch. Each defendant shall, within fifteen days from today, execute a rent note as required by the Trust. The defendants shall on or before 30th September, 2005 construct a fence surrounding the land Khala No.2 and shall leave entrance on the western side of the land Khala No. 2, as may be specified by the Trust.

Rule is made absolute to the above extent. The parties shall bear their own cost.

{Miss R.M Doshit, J.}

*Prakash**